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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,156	09/18/2006	Helmut Konopa	2003P00855WOUS	9474

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

ZEC, FILIP

ART UNIT	PAPER NUMBER
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3785

NOTIFICATION DATE	DELIVERY MODE
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10/26/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/560,156	Applicant(s) KONOPA, HELMUT	
	Examiner FILIP ZEC	Art Unit 3785	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 12,13,15-23 and 25-37.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/J J Swann/
 Supervisory Patent Examiner, Art Unit 3785

/Filip Zec/
 Examiner, Art Unit 3785

Continuation of 11. does NOT place the application in condition for allowance because: the arguments were not persuasive. In reference to the applicant's arguments regarding the Trask reference, pages 3-5, stating that the Examiner's interpretation of "intermittent" is incorrect and not applicable, as previously stated, according to another web-based dictionary (<http://www.merriam-webster.com/dictionary/intermittent>), "intermittent" is also "not continuous"; thus, whether "intermittent" is interpreted as "non-constant", "variable", "non continuous" or "not steady", Trask teaches that the circuit (FIG. 7) controls the speed of the fan motor in a variable manner (col 6, lines 66-73).

In reference to the applicant's argument regarding the "broadest reasonable interpretation" of limitation "intermittent", pages 6-7, the Examiner respectfully disagrees. Said limitation is interpreted in light of the specification, since the fan of Trask is capable of being deactivated in the activated phase of the evaporator (page 2, lines 14-21; page 4, lines 25-30 and page 5, lines 20-28).

In reference to the applicant's argument, pages 7-8, claim language does not call for activation or de-activation of the fan, as alleged by applicant. Still further, per applicant's argument that Trask does not teach "a control circuit controlling the operation of said evaporator and said fan set up to intermittently operate the fan during an activation phase of the evaporator", page 9, the Examiner respectfully disagrees, since Trask teaches that the circuit (FIG. 7) controls the speed of the fan motor in a variable manner (col 6, lines 66-73).

In reference to the applicant's arguments regarding the rejections of claim 13, pages 9-11, and claims 21-24, 26-34 and 37, pages 13-15, respectively, in light of the response in the previous paragraph, said arguments are non persuasive.

In reference to the applicant's argument regarding the Marques reference, page 11, stating that Marques simply teaches maintaining the fan inactive when the compressor starts a new operative cycle, said teaching is used to improve the primary Trask reference by implementing the electronic circuit (50, FIG. 2), which maintains the fan inactive when the compressor starts a new operative cycle (col 4, lines 15-27) in order to allow the evaporator to cool faster and avoid the dissipation of heat from the fan motor, until the evaporator is sufficiently cooled (col , lines 8-10).

In reference to the applicant's argument regarding the rejection of claims 15 and 16, pages 11-12, Shima is used solely to provide the teachings of an intermittently operable evaporator fan, thus whether the compressor is simultaneously working with the fan is not pertinent to the claimed matter that was rejected. The saving switch (25, FIG. 2), which triggers the circuit (21, FIG. 2) and the timer (21a, FIG. 2), enables the fan's intermittence for efficiency purpose (col 7, lines 1-4 and col 1, lines 37-44). Additionally, Shima clearly states that in order "to provide a low temperature storage cabinet the operation of electric fan in the cabinet is controlled based on an air conditioner parameter (difference in pressure between upper and lower compartments of the cabinet, col 1, line 40) to reduce consumption of the electric power without causing any problem discussed above" (col 1, lines 37-44), thus the motivation for combining Trask, Marques and Shima is clearly present.

In reference to the applicant's argument regarding the rejection of claim 19, pages 12-13, stating that "the speed control taught by Baker reference has absolutely nothing to do with controlling the speed of a fan inside a no-frost refrigeration device", by combining the teachings of Baker, with Trask and Marques, specifically, the structure which controls the speed of the fan (FIG. 2) per Baker, one of ordinary skill in the art would find it obvious to control the temperature inside of the air conditioned space (enclosure in FIG. 15 of Trask), by varying the speed of said fan, wherein the high speed will result in convective cooling and a rapid lowering of inside temperature. Even though Baker teaches room air conditioning and not "a no-frost refrigeration device", it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Baker, Trask and Marques are clearly all teaching refrigeration devices.

In response to applicant's argument regarding the rejection of claims 21-24, 26-34 and 37, page 15, fourth paragraph, stating that " the Kelly et al. reference is non-analogous art.", it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kelly teaches a climate control system, i.e. an air conditioner, in a vehicle, while the applicant claims a climate control system for a refrigerator; said systems are clearly related. Further, the applicant argues, page 16, second paragraph, that "In the present instance, the subject matter of the Kelly et al. reference logically would not have commended itself to an inventor's attention in considering his or her invention as a whole.". Kelly teaches an antifogging system, which is a subsystem of a climate control apparatus; fogging is a form of humidification, thus, an antifogging system in Kelly is clearly and logically related to a dehumidification system, as claimed by the applicant. Additionally, applicant argues that Kelly teaches a different manner in which the fan is controlled based on the various parameters, than what is claimed in the present invention, pages 16-18. The applicant is reminded that the teachings of Kelly, mainly using a measured relative humidity or moisture by the controller to offset blower motor speed, do not preclude the controller to offset said blower motor speed in a different manner (taught by Pesko, as explained in the rejection of claims 35 and 36). Kelly is simply teaching that there are numerous sensed inputs, including relative humidity (RELHUM), a reference temperature (REFTEMP), windglass temperature (WfNTEMP), outside air temperature (OAT), solar loading (SOLAR), passenger compartment air temperature (PCAT), a set temperature (SET) and discharge air temperature (DAT), which the microprocessor-based control unit 90 is responsive to (col 3, lines 5-13), that are used in order to effectively control the fog prevention or, more accurately, windshield glass dehumidification.

In reference to the applicant's arguments regarding the rejections of claim 25, page 19, first paragraph, in light of the response in the previous five paragraphs, said arguments are non persuasive. Trask in view of Kelly teaches the limitations of claim 21, as explained in the rejection of claim 21 and also in the response to the applicant's arguments in the previous paragraph. Shima, as pointed out

correctly by the applicant, is not relied upon for the rejection of claim 21.

In response to applicant's argument regarding the rejection of claims 35 and 36, page 19, third through sixth paragraph and page 20, first paragraph, stating "that the Pesko et al. reference clearly is not within the field of Applicant's endeavor.", it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Pesko teaches an energy management system for buildings having a plurality of individually controlled spaces, i.e. a heating, ventilating and air conditioning (HVAC) system energy management, while the applicant claims a climate control system for a refrigerator; said systems are clearly related. Further, the applicant argues, page 20, second through fourth paragraph, that "In the present instance, the subject matter of the Pesko et al. reference logically would not have commended itself to an inventor's attention in considering his or her invention as a whole.". Pesko teaches an energy management system for an HVAC system employing evaporating heat exchangers and fans, wherein it is determined that more moisture is efficiently removed from the air when the fan is operated at a low speed than when it is operated at a high speed. Thus, per remark on page 21, third paragraph, one of ordinary skill in the art would find it obvious to utilize said teaching of Pesko and improve the system of Trask and Kelly by lowering the fan speed (in system of Trask) while utilizing various air conditioning inputs in factoring the humidity of the system (sensors and controller of Kelly), in order to provide a dehumidifier that is both cost efficient and effective (Pesko).